question, states: "The landlord was not a party to the agreement. My husband was not prepared to pay maintenance to support my children so I had to bring him to Court. He made the agreement to transfer the tenancy to me so that I could support the children from the proceeds of the rent." Further, in P. 1 it was the 2nd Respondent who, on 21st March, 1946, applied to the Rent Assessment Board for the rent to be fixed at $50/- and *not* the Appellant, his wife.

From the above, and having perused the file in District Court Civil Suit No. 28/48 and R.A.B. 295/46 (a connected file), it is obvious to me that the Appellant, with the connivance of her now ex-husband, the 2nd Respondent, endeavoured by her application before the District Judge under Section 127, Civil Procedure Code, to set aside the *ex parte* decree against the 2nd Respondent, to defeat the just claims of the 1st Respondent.

For the above reasons, this appeal is dismissed with costs.

Appeal Dismissed.

A. NUNN, SINGER SEWING MACHINE CO. v. LOW KAM AND OTHERS.

[App. Civil Juris. (Callow, J.) April 6, 1949]
[Alor Star — Civil Appeal No. 35 of 1947]

Leases and Tenancies (War Absentees) Adjustment Ordinance 1946 — Interpretation of Statutes — Preamble to Statute — Individual hardship.

This was an appeal from the decision of the Leases and Tenancies (War Absentees) Adjustment Board, Central Kedah. The Board had declined the Appellant Company's application for re-occupation, because it felt that the justice of the claim by the appellant company should be subordinated to the hardship the respondents might suffer.

Held, (1) that the Board had not proceeded on the correct principle and had wrongly allowed itself to be influenced by considerations of hardship; (2) that the Appellant Company had a just claim to re-occupy the premises and ought to be put in possession.

Cases referred to:—

(1) *Roneo Ltd. v. Ng Yong Beng & others* Penang Civil Appeal No. 1 of 1947 — Unreported.

CIVIL APPEAL.

Khoo Soon Chee for the Appellant.

Respondents 1 and 3 in person.

Respondent 2 absent.

Callow, J. : — This is an appeal from the decision of the Leases and Tenancies (War Absentees) Adjustment Board, Central Kedah delivered on the 22nd of June, 1947, whereby the Appellant Company was declined an order for re-occupation of the pre-war tenancy of 19 Jalan Merbok.

The appeal came before this Court on the 18th of October, 1947, and the record reads:—

"Respondents absent.
"Counsel for Appellant present.
"Board wrongly exercised its discretion. Hands in judgment by Penang Court, Carey, J."
Order: Referred back to the Board for consideration of question of compensation."

Mr. Khoo Soon Chee for the Appellant Company said there was some argument before the reference back to the Board was ordered, and the wording of the order dated the 18th of October, 1947, inclines to support this. I cannot know more than is on the record. I heard the appeal *de novo.*

The regrettable delay from the date of the reference back, the 18th of October, 1947, to the 30th of December, 1948, when the Board responded is also unknown to me. Counsel for the Appellant suggested that there had been difficulty in assembling the Board. Certainly it would appear that the personnel of the Board which assembled on the 30th December, 1948, were different to those who constituted the Board on the 22nd of June, 1947. I do not think this difference is essential. The second Board simply assessed compensation pursuant to the order of Hill J., given on the 18th of October, 1947.

The order itself is a little enigmatic. Counsel for the Appellant submitted that it showed that my learned Brother had upheld the appeal and the reference back was simply to determine the award of compensation payable in accordance with the provision of section 9 (2) of the Leases and Tenancies (War Absentees) Adjustment Ordinance, 1946, (hereinafter called the Ordinance). I was unable to accept this, and, as already declared, the appeal was heard *de novo,* albeit some months after the Board finally complied with the order.

The first respondent appeared in person; the second Respondent Company did not appear and is reported to have left the premises in question; the 3rd respondent is the landlord who said he was indifferent as to who occupied his premises so long as the rent is paid.

The facts are that the Appellant Company was forced to vacate in December, 1941, consequent upon the Japanese invasion. The Board rightly held the War Absenteeism was proved within the definition thereof in section 2 of the Ordinance.

In 1943 or 1944 the first respondent migrated from Perak. Finding 19 Jalan Merbok vacant he rented it from the third respondent first at thirty dollars per month and later at forty dollars per month. In the upper part of the house the first respondent installed

his brother and family; below he sub-let to the second respondent company in which he stated he had an interest. He himself up to the date of appeal coming first before this Court had not dwelled in 19 Jalan Merbok. He states he has since lived there from April, 1948.

The Board declined the Appellant Company's application for re-occupation on the grounds that it would cause great hardship to the Respondents, presumably the 1st and 2nd Respondents, for the 3rd Respondent, the landlord, is not interested.

It seems to me that the Board were much influenced by fear of the hardship which would result to those then in occupation, namely the first Respondent's brother and family, and the 2nd Respondent Company. It felt that the justice of the claim by the Appellant Company should be subordinated to the hardship the first Respondent's relatives and the 2nd Respondent Company might suffer. The difficulty of alternative accommodation is well known, but did the Board proceed on the correct principles?

I think not. The preamble to the Ordinance reads :—

> An Ordinance to provide for the adjustment of Leases and Tenancies of premises, situate in urban areas, of the war absentees, and for the restoration of possession of such premises, disturbed during the period of enemy occupation.

And although the preamble cannot affect the plain meaning of the section of the order, it may be said to be the key to the understanding of it (*Maxwell*, 9th Edition Page 46).

In Roneo Ltd. v. Ng Yong Beng & others[1] Carey J., said :—

> I can say in general that it is right that the preamble to the Ordinance of which it forms part should be kept in view by the Board and unless a material injustice to the new tenant, which cannot be cured by the granting of compensation for ejectment and/or for improvements effected by the new tenant, is established, the Board should incline towards giving effect within the provisions of the Ordinance to the purpose of the Ordinance as expressed in the preamble.

It has been said that hard cases make bad law, and on page 214 of the 9th Edition by *Maxwell* on the Interpretation of Statutes it states :—

> Laws are made **ad ea quae frequentius accidunt**, and individual hardship not infrequently results from the enactments of general advantage. The argument of hardship has been said to be always a dangerous one to listen to. It is apt to introduce bad law and has occasionally led to erroneous interpretation of statutes. The Court ought not to be influenced or governed by any notions of hardship. It must look hardships in the face rather than break down the rules of law, and if, in all cases of ordinary occurrence, the law, in its natural construction, is not inconsistent, or unreasonable, or unjust, that construction is not to be departed from merely because it may operate with hardship or injustice in some particular case.

In my view the Appellant Company has a just claim to re-occupy. It was established in the premises for a measurable period prior to the Japanese invasion, and I can see no reason why the Ordinance should not be successfully invoked to restore such occupation, disturbed as it was through enemy action.

The compensation payable for ejectment and maintenance, I do not think I can fairly use the word "improvements", has been assessed by the Board at two hundred and thirty dollars and is clearly payable only to the 1st Respondent. The sum is accepted as equitable by the Appellant Company, and the current rent is also agreeable, but they seek immediate possession, at least, possession by the end of this month. I regard it more reasonable, in view of the known housing shortage, to grant a longer term.

I therefore reverse and set aside the decision of the Board and substitute the following order :—

The Appellant Company be put in possession of the premises, 19 Jalan Merbok, with effect from the 1st of July, 1949, as a monthly tenant at the rent of forty dollars per month. This order is subject to payment by the Appellant Company on or before the aforesaid date to the first Respondent of the sum of two hundred and thirty dollars.

After hearing argument I rule that each party bear its own costs.

Order of Board set aside — New Order substituted.

ONG KIM PIAW v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Laville, J.) April 11, 1949]

[Muar — Criminal Appeal No. 4 of 1949]

Evidence Ordinance Ss. 65, 74 and 168 — Charge of contravening conditions of permit by carrying an excessive number of passengers — Proof of terms of permit — Failure to produce original permit — Whether conviction can stand — Criminal Procedure Code S. 422.

In this case the appellant had been convicted for contravening the terms of a permit to operate a passenger carrying vehicle, by carrying more than the maximum number of passengers. The original permit was not produced at the trial.

Held, (1) that a certified copy of a permit under the Road Transport Proclamation is not admissible in evidence to prove the contents of the permit; (2) that excluding the improperly admitted certified copy of the permit, there was no evidence on which the Court could have convicted and therefore the appeal must be allowed.